

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
IHS Markit Ltd. Petition for Emergency)	
Declaratory Ruling)	CG Docket No. 02-278
)	
Rules and Regulations Implementing the)	
Telephone Consumer Protection Act of 1991)	

**COMMENT IN SUPPORT OF THE IHS MARKIT LTD. PETITION FOR
EMERGENCY DECLARATORY RULING**

Experian Automotive, a division of Experian Information Solutions, Inc., respectfully submits these comments in support of the Emergency Petition for Declaratory Ruling filed by IHS Markit on September 21, 2018. As IHS has shown—and as Experian Automotive’s experience confirms—autodialed calls and text messages to consumers regarding motor vehicle safety recalls clearly are made for “emergency purposes” within the meaning of 47 U.S.C. § 227(b)(1)(A). Such messages are therefore statutorily exempt from the provisions of the Telephone Consumer Protection Act (“TCPA”) dealing with autodialers and pre-recorded messages, including the requirement that such text messages or calls can only be sent with the prior express consent of the consumer. Public safety and the public interest therefore support a grant of the IHS Petition as promptly as possible.

Experian Automotive is a leading provider of automotive data services to motor vehicle manufacturers, dealers, aftermarket providers, lenders, and consumers, including statistical information related to automotive history and data solutions supporting motor vehicle manufacturer recalls and similar interactions between dealers, providers and their consumers.

As an example, Experian provided data solutions to American Honda Motor Co. and the NHTSA Monitor to help identify the current vehicle owners and their most recent email and telephone contact information in order to help accelerate contact and increase recall conversions in connection with the Takata airbag recall.

Experian Automotive is concerned that, absent clear guidance by the Federal Communications Commission (“FCC” or “Commission”), parties will be exposed to unwarranted class action litigation under the TCPA as part of their motor vehicle safety recall outreach with the potential chilling effect of discouraging broad efforts to reach vehicle owners who may be facing a safety risk. At least one automobile manufacturer (later substituted as a party by its communications provider) has already been sued in a TCPA class action.¹

Grant of the Petition would serve the important purpose of effectively foreclosing the kinds of lawsuits that the TCPA was never intended to permit while fostering communications in the public’s interest to facilitate motor vehicle safety. The TCPA itself recognizes that the public interest and public well-being require that certain kinds of calls—those made for emergency purposes—are exempt from the consent requirements of Section 227(b). While it is likely that the courts will read the plain language of the statute and conclude that suits of the type described above should be dismissed, merely the filing of lawsuits has an inhibiting effect on the businesses that are exposed to such suits. It does not serve anyone’s interest to put automobile companies in a position where they are constrained to weigh the risk of sending a message affecting public safety. It cannot be doubted that phone calls and texts that communicate a motor vehicle safety recall serve a critical public safety function. These messages and calls are not the kinds of harassing commercial robocalls or text messages that

¹ *Ibrahim v. Am. Honda Motor Co., Inc.*, No. 1:16-cv-04294 (N.D. Ill. Oct. 23, 2018).

the TCPA was designed to restrict. Motor vehicle safety recall communications save lives. Applying the “emergency purposes” exception at 47 U.S.C. § 227(b)(1)(A) to such communications is thus consistent with the TCPA’s basic purpose, which is to limit “intrusive, nuisance calls to... from telemarketers,” not public safety outreach.²

The Commission’s prior rulings recognize this public policy objective. The Commission’s rules explicitly define “emergency purposes” to refer to “calls made necessary in any situation affecting *the health and safety of consumers*.”³ The Commission has not deviated from the explicit recognition that, at the very least, the term “emergency purposes” means that calls and texts about matters affecting the safety and security of consumers are not within the ambit of calls covered by Section 227(b). Indeed, in the context of safety the Commission has recognized the need to give latitude to the term “emergency.” Thus, the FCC issued a declaratory ruling in 2016 finding that school calls to parents alerting them of events that could even “*potentially* affect the health and safety of students, faculty, and other school staff members,” including student absences, qualify as presenting “emergency circumstances” sufficient to obviate the need for consent under the TCPA.⁴ This 2016 declaratory ruling clarified that the “emergency purpose” exception applied to two very different Petitions, ranging from school messages to students to utility company messages to customers.⁵ The

² 137 Cong. Rec. 18,781 (Nov. 27, 1991).

³ 47 C.F.R. § 64.1200(f)(4) (emphasis added).

⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Blackboard, Inc. Petition for Expedited Declaratory Ruling, Edison Electric Institute and American Gas Association Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 31 FCC Rcd 9054 ¶ 21 (2016) (2016 Declaratory Ruling).

⁵ See *Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, filed by Blackboard, Inc. on Feb. 24, 2015, *Petition for Expedited Declaratory Ruling and Clarification*, CG Docket No. 02-278, filed by Edison Electric Institute and American Gas Association on Feb. 12, 2015.

Commission’s analysis hinged on whether the messages had “implications for personal safety.”⁶

As federal agencies such as the U.S. Census Bureau and Centers for Disease Control and Prevention (CDC)⁷ have documented—and as the Commission’s own experience confirms—the proportion of households served by a landline telephone is declining rapidly with a significant proportion of households only served by a wireless phone. If recall messages are to attempt to reach all households in the United States, it is critical that motor vehicle safety recalls can reach these wireless-only households.

The Petition correctly argues that granting the requested declaration is especially appropriate for “motor vehicle safety recalls” that are identified by the National Highway Traffic Safety Administration (“NHTSA”) and those that are self-reported by vehicle manufacturers, reflecting their judgment that affected vehicles could cause unreasonable risks of serious accidents, if not repaired.⁸

For these reasons, the IHS Markit Emergency Petition for Declaratory Ruling should be granted as expeditiously as possible. The issue is clear-cut as is the solution. There is no public interest reason to leave motor vehicle manufacturers and their business partners subject to the chilling threat of class action claims under the TCPA that work against the interest of public safety.

Respectfully Submitted,

⁶ 2016 Declaratory Ruling at ¶ 18.

⁷ *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2016*, Stephen J. Blumberg, Ph. D., and Julian V. Luke, National Center for Health Statistics, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Released 5/2017.

⁸ 49 U.S.C. § 30118(c)(1)-(2); *see also* 49 U.S.C. § 30118(b)(1).

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